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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,086	04/09/2004	Kenichi Hayashi	SANKY P-250 / 500615.2022	2190
26418	7590	03/30/2007	EXAMINER	
REED SMITH, LLP			PSITOS, ARISTOTELIS M	
ATTN: PATENT RECORDS DEPARTMENT			ART UNIT	PAPER NUMBER
599 LEXINGTON AVENUE, 29TH FLOOR				
NEW YORK, NY 10022-7650			2627	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		03/30/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/822,086	HAYASHI, KENICHI	
	<b>Examiner</b>	<b>Art Unit</b>	
	Aristotelis M. Psitos	2627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 09 January 2007.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-17 is/are pending in the application.  
 4a) Of the above claim(s) 15-17 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-14 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____. _____	6) <input type="checkbox"/> Other: _____

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## DETAILED ACTION

Applicant's response of 1/9/07 has been considered with the following results.

Claims 15-17 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention there being no allowable generic or linking claim. Election was made without traverse in the reply filed on 1/9/07

### *Priority*

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### *Information Disclosure Statement*

The filed IDS has been made of record.

### *Specification*

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1,2,7,10,12 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 0936604(referred to here after as Kajiyama et al).

Applicant's attention is drawn to the description of 5,23,24,25,26,29,34-36 as well as the document's abstract and its specification starting at paragraph31.

The system described in Kajiyama et al provides for a dual wavelength, one less than the other, projecting through a common optical path onto a diffractive type lens. This lens takes various formats – as noted in the above figures.

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The elements recited in claim 1 are depicted in figure 2 of the Kajiyama et al system. The limitations of claim 2 are found in the description of the diffractive lens element.

With respect to claims 7 and 10, see the description of figures 23 et al for instance.

With respect to claims 12 and 13 see the description starting at paragraph 31 for instance.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

2. Claims 4,5,8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claims 1 et al as stated in paragraph 1 above, and further in view of Hendricks et al.

With respect to these claims, they describe/limit themselves to another species/format of the diffractive lens. Such a species is taught by the Hendricks et al system.

It would have been obvious to modify the base system of Kajiyama et al with such an alternative species, motivation is to permit various formatted diffractive lens arrangements predicated upon design/manufacturing and availability criteria.

3. Claims 3 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claims 1 et al as stated in paragraph 1 above, and further in view of Katayama.

These claims depict another species/format for the diffractive lens.

Katayama teaches such a diffractive lens in this environment.

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Selection between equivalent species is considered an obvious modification of the system in Kajiyama et al; motivation is predicated upon engineering criteria such as cost, availability, etc.

4. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 10 as stated above, and further in view of Yamagata et al.

With respect to the limitations of claim 11, the particular formula description for the steps of the diffractive lens, is considered present/taught by the overall teaching of Yamagata et al who teach the relationship between wavelength, diffractive efficiency, pitch, materials and the appropriate formula  $\lambda$  times  $(n-1)$ . See not only the abstract, but also the description found in paragraph 281 for the formulas affect upon such criteria

It would have been obvious to modify the base system as relied upon above with respect to claim 10 and further modify such with the above teachings from Yamagata et al, motivation is to increase the efficiency of the diffractive lens taking into considerations such variables as wavelength, pitch, etc.

5. Claims 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claims 1 et al as stated in paragraph 1 above, and further in view of Goto et al.

The examiner interprets this claim as merely a rearrangement of parts such that the diffractive lens does not influence the return detected light beam.

Goto et al describe/teach various placements of the diffractive lens, see figures 9,13 and 15 and the associated description thereof.

It would have been obvious to modify the base system as relied upon above in paragraph 1, with such teachings from Goto et al, motivation is to rearrange components and hence reduce the overall footprint of the optical device.

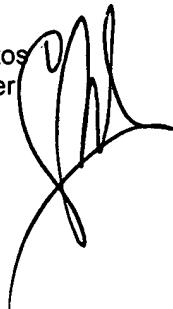
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aristotelis M. Psitos whose telephone number is (571) 272-7594. The examiner can normally be reached on M-F: 6:00 - 2:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dwayne D. Bost can be reached on (571) 272-7023. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Aristotelis M Psitos  
Primary Examiner  
Art Unit 2627



AMP